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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Steven S. Larsen
Serial No.: 10/690,421
Filed: 10/20/2003
For: Endodontic Instrument
Confirmation No.: 3835
Group Art Unit: 3732
Examiner: Ralph A. Lewis
Attorney Docket No.: PLARSS

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

EXPRESS MAIL CERTIFICATE


Express Mail Label No. EQ984100813US

Date of Deposit: October 14, 2008

I hereby certify that the following attached

Transmittal of Corrected Sections for Appellant's Brief

are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


Thompson E. Fehr



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**TRANSMITTAL OF
CORRECTED SECTIONS FOR APPELLANT'S BRIEF (37 CFR 41.37)**

1. Transmitted herewith are the Corrected Sections for Appellant's Brief in this application with respect to the Notice of Appeal filed on February 1, 2007, and the Notification of Non-compliant Appeal Brief (37 CFR 41.37) mailed on April 14, 2008.

2. STATUS OF APPLICANT

This application is on behalf of a small entity.

The statement of small entity status has already been filed.

3. EXTENSION OF TERM

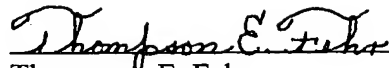
The proceedings herein are for a patent application, and the provisions of 37 CFR 1.136 apply.

Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)(1)-(5)) for a total of five months. The requisite fee for a small entity is \$1,175.00.

Fee \$1,175.00

4. Attached is a check in the sum of \$1,175.00.

DATED this 14th day of October, 2008.

A handwritten signature in cursive script, reading "Thompson E. Fehr", written over a horizontal line.

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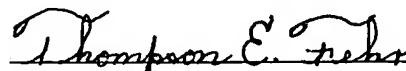
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Corrected Sections for Appellant's Brief

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CORRECTED SECTIONS FOR APPELLANT'S BRIEF (37 CFR 41.37)

These Corrected Sections for Appellant's Brief are in furtherance of the Notice of Appeal filed in this case on February 1, 2007, and the Notification of Non-compliant Appeal Brief (37 CFR 41.37) mailed on April 14, 2008.

The fees required under § 41.20 and any required petition fee for revival are dealt with in the accompanying Transmittal of Corrected Sections for Appellant's Brief.

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This brief contains the following items, under headings of the same name and in the order given:

STATUS OF CLAIMS

SUMMARY OF CLAIMED SUBJECT MATTER

The final page of this brief bears the attorney's signature.

STATUS OF CLAIMS

Claim 1 through 20 have been rejected.

Claims 1 through 8 and 11 through 20 are being appealed.

Although claims 9 and 10 have been rejected and have not been canceled or withdrawn, they are not being appealed because Appellant has noticed that they are identical to claims 19 and 20 and because claims 19 and 20 are being appealed.

SUMMARY OF CLAIMED SUBJECT MATTER

The only means plus function in the claims is within claim 11 and states, “a means for securely retaining a plastic cap of an endodontic file between the threaded projection of said handle and the second end of said cap.” The structure corresponding to the claimed function is described in the last sentence of paragraph [0016] of the specification: “The cap 2 is then screwed closer to the first end 5 of the elongated base 3 until the plastic cap 12 is securely retained in the channel 6 between the second end 9 of the cap 2 and the projection 4, as a result of the blunt projection 4, as seen in FIG. 1, pushing against the blunt plastic cap 12, shown in FIG. 2 and both shown and described in United States patent no. 3,247,594.”

With such structure for the means claim, the subject matter of independent claims 1 and 11 is the same and is explained in paragraphs [0012], [0013], [0015], and the parenthetical statement within paragraph [0016] of the Application:

[0012] As illustrated in FIG. 1, the present holder has a handle 1 and a cap 2.

[0013] The handle 1 employs an elongated base 3 having a threaded projection 4 at a first end 5.

...

[0015] The cap 2 contains a channel 6 extending through a first end 7 of the cap. The first portion 8 of the channel 6 is threaded for mating with the projection

4 of the elongated base 3. The second end 9 of the cap 2 contains an aperture 10 through which an endodontic file 11 can project.

[0016] (The diameter of the aperture 10 is selected to be larger than the diameter of the endodontic file 11 but smaller than the diameter of the plastic cap 12.)

To the preceding subject matter independent claim 19 adds the subject matter of paragraph [0014] and the first sentence of paragraph [0016]:

[0014] Preferably, the maximum outer diameter of the cap 2 is substantially the same as the maximum outer diameter of the elongated base 3.

. . .

[0016] In use, an endodontic file 11 is placed so that it extends through the aperture 10 with the plastic cap 12 that is attached to the endodontic file 11 (at an end 16 opposite to the tip 14) being in the channel 6.

The endodontic file 11 and plastic cap 12 are illustrated in FIG. 2.

And to the subject matter of independent claim 19, independent claim 20 adds the subject matter of paragraph [0017]:

[0017] In order to facilitate the work of an endodontist, an option to the present invention is, as portrayed in FIG. 2, an endodontic file 11 that initially moves away from the centerline 13 of the endodontic file 11 in a first direction shown by the arrow A and then curves back toward and crosses the centerline 13 as the tip 14 of the endodontic file 11 is approached but does not then again cross the centerline 13.

Each independent claim involved in the appeal, *i.e.*, claims 1, 11, 19, and 20, is mapped to the specification below, with the element reference characters, paragraph numbers, page numbers, line numbers, and figure numbers referring to such specification:

1. An endodontic instrument, which comprises:

a handle 1 having an elongated base 3 with a threaded blunt projection 4 at a first end 5 [paragraphs 0012, 0013, and 0016; page 3, lines 11 through 13 and amended

paragraph 0016, lines 6 through 8, which Appellant believes will become page 3, lines 25 through 27; FIG. 1]; and

a cap 2 containing a channel 6 extending through a first end 7 of said cap 2 with a first portion 8 of the channel 6 being threaded for mating with the projection 4 of the elongated base 3 of said handle 1 [paragraph 0015; page 3, lines 16 through 17; FIG. 1], said cap 2 possessing a side 15 [paragraph 0018; page 4, line 4, which Appellant believes will become page 4, line 7; FIG. 1], and said cap 2 also having a second end 9 containing an aperture 10 through which an endodontic file 11 can project [paragraph 0015; page 3, lines 18 through 19; FIG. 1 and FIG. 2], the diameter of the aperture 10 being selected to be larger than the diameter of the endodontic file 11 but smaller than the diameter of a plastic cap 12 attached to the endodontic file 11 [paragraph 0016; page 3, lines 21 through 23; FIG. 1 and FIG. 2].

11. An endodontic instrument, which comprises:

a handle 1 having an elongated base 3 with a threaded blunt projection 4 at a first end 5 [paragraphs 0012, 0013, and 0016; page 3, lines 11 through 13 and amended paragraph 0016, lines 6 through 8, which Appellant believes will become page 3, lines 25 through 27; FIG. 1];

a cap 2 containing a channel 6 extending through a first end 7 of said cap 2 with a first portion 8 of the channel 6 being threaded for mating with the projection 4 of the elongated base 3 of said handle 1 [paragraph 0015; page 3, lines 16 through 17; FIG. 1], said cap 2 possessing a side 15 [paragraph 0018; page 4, line 4, which Appellant believes will become page 4, line 7; FIG. 1], and said cap 2 also having a second end 9 containing an aperture 10 through which an endodontic file 11 can project [paragraph 0015; page 3,

lines 18 through 19; FIG. 1 and FIG. 2], the diameter of the aperture **10** being selected to be larger than the diameter of the endodontic file **11** but smaller than the diameter of a plastic cap **12** attached to the endodontic file **11** [paragraph 0016; page 3, lines 21 through 23; FIG. 1 and FIG. 2];

and a means for securely retaining a plastic cap **12** of an endodontic file **11** between the threaded projection **4** of said handle **1** and the second end **9** of said cap **2** [amended paragraph 0016, last sentence, which Appellant believes will become page 3, lines 23 through 27; FIG. 1 and FIG. 2; see also, the first paragraph of this Summary where the structure that corresponds to the means function of claim 11 is set forth as describe in the specification].

19. An endodontic instrument, which comprises:

a handle **1** having an elongated base **3** with the base **3** possessing a threaded blunt projection **4** at a first end **5** [paragraphs 0012, 0013, and 0016; page 3, lines 11 through 13 and amended paragraph 0016, lines 6 through 8, which Appellant believes will become page 3, lines 25 through 27; FIG. 1] and a maximum outer diameter [paragraphs 0013 and 0014; page 3, lines 12 through 15; FIG. 1];

a cap **2** containing a channel **6** extending through a first end **7** of said cap **2** with a first portion **8** of the channel **6** being threaded for mating with the projection **4** of the elongated base **3** of said handle **1** [paragraph 0015; page 3, lines 16 through 17; FIG. 1], said cap **2** possessing a side **15** [paragraph 0018; page 4, line 4, which Appellant believes will become page 4, line 7; FIG. 1], said cap having a maximum outer diameter that is substantially the same as the maximum outer diameter of the elongated base [paragraphs 0012, 0013, and 0014; page 3, lines 11 through 15; FIG. 1] and said cap **2** also having a

second end 9 containing an aperture 10 through which an endodontic file 11 can project [paragraph 0015; page 3, lines 18 through 19; FIG. 1 and FIG. 2], the diameter of the aperture 10 being selected to be larger than the diameter of the endodontic file 11 but smaller than the diameter of a plastic cap 12 attached to the endodontic file 11 [paragraph 0016; page 3, lines 21 through 23; FIG. 1 and FIG. 2]; and

an endodontic file 11 with a tip 14 and also with a blunt plastic cap 12 attached to said endodontic file 11 at an end 16 opposite to the tip 14 [amended paragraph 0016, lines 1 through 8, which Appellant believes will become page 3, lines 20 through 27; FIG. 1 and FIG. 2], said endodontic file 11 extending through the aperture 10 in the second end 9 of said cap 2 and the attached plastic cap 12 being contained within the channel 6 of said cap 2 [amended paragraph 0016, lines 1 through 6, which Appellant believes will become page 3, lines 20 through 25; FIG. 1 and FIG. 2].

20. An endodontic instrument, which comprises:

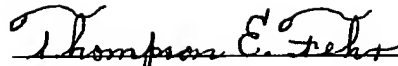
a handle 1 having an elongated base 3 with the base 3 possessing a threaded blunt projection 4 at a first end 5 [paragraphs 0012, 0013, and 0016; page 3, lines 11 through 13 and amended paragraph 0016, lines 6 through 8, which Appellant believes will become page 3, lines 25 through 27; FIG. 1] and a maximum outer diameter [paragraphs 0013 and 0014; page 3, lines 12 through 15; FIG. 1];

a cap 2 containing a channel 6 extending through a first end 7 of said cap 2 with a first portion 8 of the channel 6 being threaded for mating with the projection 4 of the elongated base 3 of said handle 1 [paragraph 0015; page 3, lines 16 through 17; FIG. 1], said cap 2 possessing a side 15 [paragraph 0018; page 4, line 4, which Appellant believes will become page 4, line 7; FIG. 1], said cap having a maximum outer diameter that is

substantially the same as the maximum outer diameter of the elongated base [paragraphs 0012, 0013, and 0014; page 3, lines 11 through 15; FIG. 1] and said cap **2** also having a second end **9** containing an aperture **10** through which an endodontic file **11** can project [paragraph 0015; page 3, lines 18 through 19; FIG. 1 and FIG. 2], the diameter of the aperture **10** being selected to be larger than the diameter of the endodontic file **11** but smaller than the diameter of a plastic cap **12** attached to the endodontic file **11** [paragraph 0016; page 3, lines 21 through 23; FIG. 1 and FIG. 2]; and

an endodontic file **11** with a tip **14**, with a centerline **13** [paragraph 0017; page 3, line 27 through page 4, line 1, which Appellant believes will become page 4, lines 2 through 3; FIG. 2], and also with a blunt plastic cap **12** attached to said endodontic file **11** at an end **16** opposite to the tip **14** [amended paragraph 0016, lines 1 through 8, which Appellant believes will become page 3, lines 20 through 27; FIG. 1 and FIG. 2], said endodontic file **11** extending through the aperture **10** in the second end **9** of said cap **2** and the attached plastic cap **12** being contained within the channel **6** of said cap **2** [amended paragraph 0016, lines 1 through 6, which Appellant believes will become page 3, lines 20 through 25; FIG. 1 and FIG. 2] and said endodontic file **11**, as said endodontic file **11** proceeds toward the tip **14**, initially moving away from the centerline **13** and then curving back toward and crossing the centerline **13** but not then again crossing the centerline **13** [amended paragraph 0017, lines 2 through 5, which Appellant believes will become page 4, line 4 through 7; FIG. 2].

DATED this 14th day of October, 2008.

A handwritten signature in cursive script, reading "Thompson E. Fehr", written over a horizontal line.

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